

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDRE VELEZ,

Petitioner,

-against-

SUPERINTENDENT MICHAEL CAPRA,

Defendant.

16-CV-6490 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Petitioner Andre Velez, who is proceeding *pro se*, filed this petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. On August 30, 2016, the Honorable Colleen McMahon of this court directed Petitioner to (1) pay the \$5.00 filing fee or request that the filing fee be waived and (3) sign the petition. On October 6, 2016, the Court received Petitioner's \$5.00 payment for the filing fee, but Plaintiff did not submit a signed signature page of his petition. Judge McMahon therefore dismissed the petition on October 16, 2016, under Rule 41(b) of the Federal Rules of Civil Procedure, and the Clerk of Court closed the action.

On July 28, 2017, Petitioner filed in his closed case an amended petition, which included an original signature. No action was taken on the petition.

On September 15, 2023, the Clerk's Office received a letter from Petitioner stating that he has "not received a decision." (ECF 8, at 1.) The action was reassigned to the undersigned's docket on September 22, 2023.

The Court construes Plaintiff's September 16, 2023 letter as a motion brought under Rule 60(b) of the Federal Rules of Civil Procedure, seeking reconsideration of the order of dismissal issued on October 16, 2016. The Court grants Plaintiff's motion for reconsideration and directs the Clerk of Court to vacate the order of dismissal and civil judgment (ECF 4-5). The amended

petition will be reviewed for substantive sufficiency, and then, if proper, the case will be reassigned to a district judge in accordance with the procedures of the Clerk's Office.

CONCLUSION

Plaintiff's September 15, 2023 letter, construed as brought under Rule 60(b) of the Federal Rules of Civil Procedure (ECF 8) is granted. The Court directs the Clerk of Court to vacate the order of dismissal and civil judgment (ECF 4-5).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: November 15, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge